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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,813	03/30/2004	Shiu-Lan Liu	P-3641.278	5067
7590	08/29/2006		EXAMINER	
Jackson Walker L.L.P. Suite 2100 112 E. Pecan Street San Antonio, TX 78205			MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
				3728

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/812,813	LIU ET AL.	
	Examiner Jila M. Mohandes	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 June 2006.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: In claim 1, line 15, the phrase "protruding are able" should be - - protruding area are able- -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGivern (3,333,593) in view of Aylott (3,504,682), Destanque et al. (6,412,640), Schroeder et al. (6,688,015) and Hirzel (Des. 339,235). McGivern '593 discloses an eyelid enhancement kit comprising: a package having a first compartment; a first tray (insert 21) received in the first compartment and having a first recess and a second recess (grooves 14) respectively defined in a top face of the first tray and a cover (12) covering the first tray;

a first eyelid mask and a second eyelid mask (false eyelashes 15) sandwiched between the first tray and the cover and respectively received in the first recess and the second recess of the first tray; wherein the cover has a first protruding (protuberance 24) area formed on a bottom face of the cover to correspond to the first recess and a second protruding area (protuberance 24) formed on the bottom face of the cover to correspond to the second recess so that the first protruding area and the second protruding area are able to be respectively received in the first recess and the second recess to securely sandwich the first eyelid mask and the second eyelid mask. See Figures 1-4 embodiments. McGivern '593 does not appear to disclose a second compartment with a second tray and recess for holding a brush and the brush having a rubber cap formed on a distal end of the eyelid brush and cutouts for the recesses.

Destanque '640 is cited to merely show that it is old and conventional to provide additional compartments with trays to kits to provide for additional storage space. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of Destanque '640 to provide an additional compartment with additional tray with recess for holding additional items in the kit of McGivern '593, since it has been held that mere duplication and rearranging of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. V. Bemis Co., 193 USPQ 8 and *In re Japikse*, 86 USPQ 70.

Aylott '682 discloses that it is desirable to provide a brush with eyelid masks for cleaning and use with the eyelid masks. Therefore, it would have been obvious to one

of ordinary skill in the art at the time the invention was made to provide an brush to the modified kit of McGivern '593 as taught by Aylott '682 to be used with the eyelid masks.

Schroeder '015 is cited to merely to show that it is old and conventional to provide cutouts for recesses in a tray for easier removal of items held therein. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of Schroeder '015 to provide cutouts for the recesses in the tray of McGivern '593 for easier removal of the items being held therein.

Hirzel discloses that it is desirable to have apparatus for applying cosmetics with an applicator having multiple means such as a brush (bristles), a comb (teeth) and a rubber cap to have multiple functions. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the brush of McGivern '593 with double applicator such as brush and a rubber cap as taught by Hirzel for multiple applications.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are eyelid enhancement kits analogous to applicant's instant invention.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

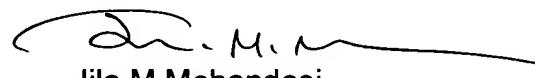
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesu whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jila M Mohandes  
Primary Examiner  
Art Unit 3728

JMM  
August 22, 2006